

REMARKS

Claims 1-8 are pending in the application. Claims 1-4, 6, and 8 have been amended. No new matter has been added as the amendments have support in the specification as originally filed.

Fig. 1 and the Specification were objected to for using the term “related art.” All instances of “related art” have been changed to “prior art.” As such, it is respectfully submitted that the grounds for the objection of Fig. 1 and the Specification have been overcome and it is respectfully requested that the Examiner withdraw the objection.

Claims 1-4 and 6-8 were objected to for various informalities. With this paper claims 1-4 and 6-8 have been amended as suggested by the Examiner. It is respectfully submitted that the grounds for objection have been overcome and it is respectfully requested that the Examiner withdraw the objection.

Claims 2 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1-3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takahashi et al. (US 5,901,320) in view of Kouznetsov et al. (US 6,782,527). Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fitzpatrick (US 2002/0012347) in view of Takahashi. Applicant respectfully traverses these rejections, and requests reconsideration and allowance of the pending claims in view of the following arguments.

Rejection under 35 U.S.C. 112, second paragraph

Claims 2 and 8 are rejected under 35 U.S.C. 112, second paragraph. Specifically, the Examiner stated that there is insufficient antecedent basis for the limitation “the home appliance,” as recited in claim 2. Additionally, the Examiner stated that there is insufficient antecedent basis for the limitation “the appliance company server,” as recited in claim 8.

Claim 2 has been amended to replace “the home appliance” with “the selected home appliance.” Additionally, claim 8 has been amended to replace “the appliance company server” with “the remote server.” Thus, it is respectfully submitted that the grounds for the rejection of claims 2 and 8 have been overcome and it is respectfully requested that the Examiner withdraw the rejections.

Rejection under 35 U.S.C. 103(a) as being unpatentable over Takahashi in view of Kouznetsov

Claims 1-3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takahashi et al. (US 5,901,320) in view of Kouznetsov et al.

As amended, claim 1 recites a method of upgrading system software of a home appliance, comprising reading a system software version of a selected home appliance from among a plurality of home appliances, wherein the system software of the selected home appliance is to be upgraded among said plurality of home appliances wherein a home server is connected to an appliance company server over an Internet and the home server is connected to each of said plurality of home appliances in a local home network, wherein the selected home appliance communicates via the home server and over the Internet with the appliance company server.

Pages 9 and 10 of the Office Action state that Takahashi does not disclose “wherein a home server is connected to an applicant company server over an Internet; and wherein a two-way communication connection is established between the home server and the appliance company server,” as recited in claim 1. The Office Action further states that it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Kouznetsov into the teaching of Takahashi to include wherein a home server is connected to an applicant company server over an Internet; and wherein a two-way communication connection is established between the home server and the appliance company server. Applicant respectfully disagrees.

Col. 6 lines 40-49 and Fig. 2 of Kouznetsov disclose “a software-implemented agent 202 executes on the computing devices within the appliance 117. Agent 202 performs a relatively small number of functions in the application management solution in accordance with the present invention. First, agent 202 establishes a frequent connection with application management server 108 to check for updates in code and/or data used to provide the application services. When appropriate, agent 202 downloads updated code into memory and/or storage devices within appliance 117.” (Emphasis added).

A review of the passage above reveals that agent 202 is executed within the appliance 117. Therefore, each appliance is directly connected to the application manager server such that the application manager server directly sends updates to the appliance. As such, each appliance is individually responsible for requesting, downloading, and replacing the software of the appliance through the network. In contrast, amended claim 1 recites a home server is connected to an appliance company server over an Internet and the home server is connected to each of said plurality of home appliances in a local home network. Thus, Kouznetsov teaches away from the claimed invention by requiring the agent within each appliance to individually and independently request, download, and replace the software directly from a remote server. Therefore, Kouznetsov cannot teach or disclose “a home server is connected to an appliance company server over an Internet

and the home server is connected to each of said plurality of home appliances in a local home network,” as recited in amended claim 1.

Additionally, page 10 of the Office Action states that elements 101, 105, and 108 of Fig. 1 of Kouznetsov disclose “wherein a home server is connected to an appliance company server over an Internet,” as recited in amended claim 1. Applicant submits that element 101 of Kouznetsov discloses a network infrastructure, such as the Internet. Additionally, element 108 discloses an application management server. Applicant respectfully submits that connect server 105 cannot teach or suggest a home server as recited in claim 1, particularly for the following reason.

Col. 5 lines 28-31 of Kouznetsov disclose that “connect servers 105 are implemented by connection sharing software such as Microsoft Internet connection sharing service (ICS) or by software such as found in routers.” Applicant submits that connection sharing software is not the same as a home server recited in claim 1. As recited in claim 1, “the home server is a centralized local home server, which determines which one of said plurality of home appliances connected to the home server in the local home network require a software update.” Kouznetsov fails to teach or suggest that the connect servers determine which one of a said plurality of home appliances require a software update. Applicant submits that the connect server disclosed in Kouznetsov is simply a device which allows a plurality of appliances to share a network connection. Therefore, in addition to the reasons presented above, Kouznetsov cannot teach or suggest “wherein a home server is connected to an appliance company server over an Internet,” as recited in amended claim 1.

As stated above, Takahashi does not teach or disclose “wherein a home server is connected to an applicant company server over an Internet; and wherein a two-way communication connection is established between the home server and the appliance company server,” as recited in claim 1. Thus, Takahashi does not recite all of the elements recited in claim 1. For example, Takahashi cannot teach “downloading the

system software of the corresponding home appliance from the appliance company server to the home server,” as stated in page 9 of the Office Action. Nor can Takahashi teach “reading a latest system software version corresponding to the selected home appliance from the appliance company server,” as stated in page 8 of the Office Action.

Additionally, as stated above, Kouznetsov fails to cure the deficiencies of Takahashi with respect to “a home server is connected to an applicant company server over an Internet” and “a two-way communication connection is established between the home server and the appliance company server,” as recited in claim 1. It is respectfully submitted that the cited prior art references cannot be combined to teach the claimed invention. Further, even if one is modified in accordance to the teaching of the other, the resultant modification would be an impractical or inoperable combination. Therefore, the combination of Kouznetsov and Takahashi would fail to teach all of the elements recited in claim 1.

For the reasons presented above, claim 1 should be allowable over the cited combination of references. Additionally, claim 8 incorporates elements of allowable claim 1. Specifically, claim 8 recites “a remote server connected to the home server over a remote connection” and “a two-way communication connection is established between the home server and the remote server.” Thus, claim 8 should be allowable for reasons similar to those set out in conjunction with claim 1. Additionally, claims 2-3 should be allowable by virtue of their dependence on allowable claim 1.

Rejection under 35 U.S.C. 103(a) as being unpatentable over Fitzpatrick in view of Takahashi.

Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fitzpatrick in view of Takahashi.

Page 16 of the Office Action states that Fitzpatrick does not disclose “wherein the home server is a centralized local home server, which determines which one of home appliances in the local home network require a software update,” as recited in claim 4. The Office Action further states that it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Takahashi into the teaching of Fitzpatrick to include “wherein the home server is a centralized local home server, which determines which one of home appliances in the local home network require a software update.” Applicant respectfully disagrees.

Applicant respectfully submits that prior art references in combination do not make an invention obvious unless something in the prior art references would suggest the advantage to be derived from combining the teachings.” In re Sernaker, 217 USPQ 1, 6 (Fed. Cir. 1983). Further, it is well settled that the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. In re Mills, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). Since obviousness may not be established by hindsight reconstruction or conjecture, Applicant invites the Examiner to point out the alleged motivation to combine with specificity,¹ or alternatively provide a reference or affidavit in support thereof pursuant to MPEP §2144.03.²

It is respectfully submitted that the cited prior art references cannot be combined to teach the claimed invention. Further, even if one is modified in accordance to the teaching of the other, the resultant modification would be an impractical or inoperable combination.

Page 9 and 10 of the Office Action state that Takahashi does not teach a home server connected to an appliance company server over an Internet and a two-way

¹ *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984).

² “The rationale supporting an obviousness rejection may be based on common knowledge in the art or “well-known” prior art. . . . If the applicant traverses such an assertion the examiner should cite a reference in support of his or her position. When a rejection is based on facts within the personal knowledge of the examiner . . . the facts must be supported, when called for by the applicant, by an affidavit from the examiner.”

communication connection established between the home server and the appliance server. Thus, Takahashi does not intend for the monitoring apparatus to establish a two-way communication connection with an appliance server. Rather, Takahashi intends for the monitoring apparatus to store “in advance a plurality of program files for each of the CPU’s in each network element.” (Takahashi, Col. 4 lines 23-25). On the contrary, Fitzpatrick teaches downloading program code from a remote source directly to a set-top-box (STB) and determining whether the downloaded data is a match for the STB and should be installed (Fitzpatrick par. [0059]).

As such, Takahashi does not provide a motivation to combine with Fitzpatrick because Takahashi requires the monitoring apparatus to store in advance a plurality of program files for each CPU, unlike Fitzpatrick which downloads information and determines whether the downloaded data should be installed. Applicant submits that there is no indication in the Office Action, how such combination is possible, as the two systems are independently complex and cannot be easily modified to work with each other. As such, no portions of the cited references provide a suggestion or motivation for combining the references in a manner that would make the invention as recited in claims 4-7 obvious.

For the above reasons, the invention as recited in the amended claim 4 is distinguishable over the references cited by the Examiner. Independent claim 6 substantially incorporates the discussed limitations of claim 4 and therefore claim should be in condition for allowance. Claim 5 depends on claim 4 and should also be in condition for allowance by the virtue of their dependence on an allowable base claim.

CONCLUSION

In view of the above remarks, Applicant submits that claims 1-8 of the present application are in condition for allowance. Reexamination and reconsideration of the application, as originally filed, are requested.

No amendment made was related to the statutory requirements of patentability unless expressly stated herein; and no amendment made was for the purpose of narrowing the scope of any claim, unless Applicant has argued herein that such amendment was made to distinguish over a particular reference or combination of references.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Los Angeles, California telephone number (213) 623-2221 to discuss the steps necessary for placing the application in condition for allowance.

Lee, Hong, Degerman, Kang & Schmadeka

Date: January 10, 2008

By: _____



Richard C. Salfelder
Registration No. 51,127
Attorney for Applicant(s)

Customer No. 035884